IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.410 OF 2006

Nandlal A. Paliwal and Ors. ....Applicants

vs.

The State of Maharashtra & Ors ....Respondents.

Rahul S.Kate for the applicants.

A.P.Kulkarni for respondent no.2.

CORAM: S.C.DHARMADHIKARI, J.
12th January, 2007.

DATE OF RESERVING THE JUDGMENT : 15.12.2006

DATE OF PRONOUNCING THE JUDGMENT : 12.1.2007

ORAL JUDGEMENT :

1. Rule. Respondents waives service. By consent Rule made returnable forthwith. Heard both sides.

2. The Revision Application challenges the judgment and order dated 12.10.2006 delivered by the Additional Sessions Judge, Baramati in Criminal Appeal No. 59 and 60 of 2005. By this judgment and order,

which is common in the above appeals, the Learned Sessions Judge, Baramati has partly allowed the appeals preferred by the applicants before me. The Learned Judge has quashed and set aside the conviction and sentence imposed by the Trial Court on the Applicants/Original Accused for the offence punishable under Section 500 read with 34 of IPC. However, the Learned Judge has upheld and maintained the conviction and sentence imposed by the Trial Court in so far as the offence punishable under Section 501 and 502 read with 34 of IPC.

3. As is clear the applicants are the original accused. They were convicted by the trial court i.e. the Learned Judicial Magistrate First Class, Baramati by Judgment and order dated 8.11.2005 in S.CT.No.1474 of 1988. The Trial Court held that the Applicants are guilty of the offences punishable under Section 500, 501, 502 read with S.34 IPC. He sentenced them to suffer simple Imprisonment for 3 months, 4 months and 4 months alongwith fine of Rs.500/- each for the above offences. The Lower Appellate court set aisde the conviction and sentence imposed under Section 500 read with Section 34 I.P.C. but maintained the other convictions and

sentences under Section 501, 502 read with S.34 IPC.

4. The second respondent before me is the original complainant. He filed the above complaint in the court of Judicial Magistrate First Class (JMFC for short), Baramati. The complaint was filed on 6.10.1988. The complainant alleges that the applicant no.1 is the owner of Weekly/Marathi known as ‘Ratta-E-Azam" circulated at Baramati and other places. The applicant no.2 is the Editor, applicant no.3 is the Executive Editor and applicant No.4 is the Joint Editor of this news weekly. The complaint was working as Revenue circle officer at Baramati.

5. On 8.4.1987 an incident took place at Village-Pimpri Limtek, where houses of poor and depressed classes were burnt. The government directed that panchanama be drawn for assessing the loss sustained by these poor people. It directed recording of statements of the affected persons. Immediately on the next day the Sub-Divisional and Revenue Officer and the Tahsildar visited the site and gave Rs.110/- to each of the arson

affected family. This was the amount paid by way of immediate relief. The complainant was serving as Revenue circle officer and he was directed by his superiors to prepare report for giving financial assistance by way of compensation or by way of immediate relief. Accordingly, the complainant obtained applications and consent letters of affected persons. The affected persons agreed to accept help from the government in the form of necessary articles so as to rebuild/reconstruct their houses. Accordingly, the complainant recorded statements of arson affected persons and submitted report to Tahsildar, Baramati which was despatched to the Collector, Pune for further action. The complainant states that majority of affected persons reconstructed their huts and started residing therein. It is his case that as huts were already reconstructed by the beneficiaries, the State Government or the Collector, Pune did not sanction any financial assistance to these affected persons. However, the applicants in furtherance of common intention published in the above Weekly on 29.9.1988 and that too on the first page, an item item under the heading :-

." Jalitgrasthanchya Taluvaril Ek Lakh

Rupaiyanche Loni Khanarya ‘Naradham’ Circle Inspector Deshpande Yanha Tatkal Nilambit Kara"

6. This news item is suggesting that the complainant has misappropriated the amount of Rs.1 lacs awarded to the affected persons and demand was made for his suspension. It is the case of the complainant that the item went ahead and sought arrest of the complainant on the ground that he has misappropriated the amounts as aforesaid. It is further alleged that this news item was published in the news weekly by the accused with an intention to defame the complainant and to lower his dignity in the eyes of the society at large. The accused has absolutely no reason for publishing such a news item. The news lowers the status of the complainant in the eyes of the residents of Baramati and after publication of the said news item people have started looking towards him with suspicion and avoiding him. Upon these allegations, the complaint was instituted and it was further alleged that the applicants are guilty of offence punishable under Section 501 and 502 read with 34 of IPC. The

complainant therefore prayed that the accused be tried in accordance with law.

7. By an order dated 17.10.1988 the JMFC, Baramati issued process against the applicants. Initially the case was tried as summary case and plea was recorded. Upon conclusion of the summary trial, the JMFC, Baramati convicted all the accused by his judgment and order dated 19.9.1989. He held them guilty of offences punishable under the above mentioned sections and sentenced them accordingly. An appeal was filed against the Judgment and order of the JMFC dated 19.9.1989 being Criminal Appeal No. 77 of 1989. The Additional Sessions Judge, Baramati by his judgment and order dated 24.1.1991 allowed the appeal and set aside the conviction. The Learned Additional Session Judge, Baramati directed that a retrial be held in the above criminal complaint.

8. Accordingly the retrial was held. The JMFC framed charges. The applicants pleaded not guilty and claimed to be tried. The complainant examined himself and other witnesses. The applicants did not examine any

witness. The Learned JMFC took the documents on record in accordance with law and after considering the oral arguments and appreciating the entire evidence once again convicted and sentenced the applicants as above.

9. This order was challenged in two separate appeals which were partly allowed by the common order. The Revision application challenges the concurrent Judgments and orders of conviction and sentence.

10. Mr.Kate, learned counsel appearing for the applicants, firstly submits that an unconditional apology has been tendered by the applicants. Further, they have undergone 10 days simple Imprisonment. His next submission is that the applicants have been convicted by the Trial Court for the offence punishable under Section 500 of IPC but that conviction and sentence has been set aside in appeal. If that conviction and sentence is set aside in appeal then further conviction under Sections 501 and 502 of IPC cannot be sustained and upheld. In other words once, there is no defamation then there cannot be conviction and sentence against the applicants, who are the owner and Editors, of the Marathi weekly.

11. Mr.Kate, then contended that the article read as a whole would demonstrate that the same is published by the applicants for public good and in public interest. The case clearly falls in Exception Nine to Section 499 of IPC. The publication is in good faith. Therefore, the applicants could not have been convicted and sentenced for the offences alleged against them. That the publication pertains to an incident which is made known to the public as it affects them is not disputed at all. In other words, the subject of the news item is of public interest and the publication is for public good. Therefore, the case is clearly covered by the above exception. That the applicants took due care while publishing the same is also clear from the perusal of the records. This being the position, the applicants could not have been convicted and sentenced as above.

12. In any event, according to Mr.Kate if the complaint is perused it is clear that the same does not attribute any role to all the Accused. The staff of a newspaper has no role in choosing and selecting the News items for publication. All that is alleged against the

other accused is that they have ignored the contents of the defamatory material. This conclusion alone is not enough for convicting the other applicants. He submits that the case was conducted as a warrant triable case by the JMFC, Baramati. Now, the apology has been tendered. Even the news weekly has closed down. The applicants have no criminal antecedents. In such circumstances, they having undergone 10 days simple imprisonment, the sentence be reduced to the period already undergone by them. In other words, the criminal revision application be allowed by setting aside the orders of the courts below.

13. Mr. Kate has relied upon the decision of the Hon'ble Supreme Court reported in AIR 92 SCC 2206 K.M.Mathew vs. State of Kerala. He has also relied upon a decision of the Single Judge of Kerala High Court reported in 1995 Criminal Law Journal 1922.

14. On the other hand, the original complainant appearing in person has supported the impugned judgments. He has contended that subsequent act of tendering an apology can by no means absolve the applicants from the

offence and their conviction and sentence, therefore, cannot be interfered with on this ground. That apart, the apology is not at all genuine. It comes in an Revision application to challenge the concurrent Judgments and orders and without prejudice to the rights of the applicants therein. Such an apology should not be accepted at all. The complainant then urges that the concurrent findings on facts are based on material produced during the course of trial. Such findings are binding upon this court. This court in its revisional jurisdiction cannot decide the matter as a court of further appeal. It cannot reappraise and reappreciate the materials placed on record. Therefore, this is not a case where this court should interfere in its revisional jurisdiction. The Revision Application be therefore dismissed.

15. The complainant then points out that there is a specific averment in the complaint in as much as the news item is admittedly defamatory and it lowers the image and status of the applicant in the eyes of the society. The applicant is accused of corruption. Once he is accused of being corrupt and his reputation is

damaged considerably, there is no question of this court interfering with the findings on facts. The ingredients of Section 499 are fully satisfied. The burden of proving that the publication was in good faith is on the accused but they have failed to discharge the same. He contends that there is no question of the applicant not being held guilty of the offence of defamation when the offence is spelt out in Section 499 of IPC and punishment for the said offence is enlisted under Section 501 to 502 of IPC. So also the publication being in a newspaper, the trial court has rightly convicted the applicant under Section 501 and 502 of IPC. That conviction is upheld by the appellate court. Inadvertently, the trial court convicted the applicants for the offence punishable under Section 500 and that error is corrected by the lower appellate court. In such circumstances, no benefit can be derived by the applicant of the fact that their appeal is partly allowed. In other words, the applicants are guilty of the offence of defamation and by virtue of their position as owner and editor of the newspaper and their respective role they have been convicted under Section 501 an 502 of IPC. Therefore, there is no merit in the contentions of Mr.Kate in this behalf. He submits

that there is evidence on record to show that the complainants reputation has been lowered in the community and there is concurrent finding in that behalf. In such circumstances, the revision application deserves to be dismissed.

16. With the assistance of both sides, I have perused the complaint, the revision application and the annexures thereto including the impugned orders. I have also perused the original article/news item published in the marathi weekly.

17. The Article read as a whole imputes corrupt motives on the part of original complainant. It accuses him of misappropriating public funds for his own benefit. That it is Defamatory is not disputed before me. However, it is Applicants case that the publication is in good faith and for public good.

18. The ninth exception to Section 499 of IPC reads as under :-

Section 499. Defamation

> *Ninth Exception.*-**Imputation made in good faith by person for protection of his or other's interests.-** It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

19. A bare perusal of this exception makes it clear that it is not defamation to make an imputation on the character of another person if that imputation be made in good faith for the protection of the interest of the person making it, or of any other person or for the public good. The term "Good Faith as defined in Section 52 IPC which reads thus :-

> ." **52. "Good Faith".-** Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

20. Thus, nothing is said to be done or believed in good faith which is done or believed without due care and attention.

21. Once such is the nature of the plea raised by

the applicants then, naturally, the courts below were right in holding that the burden to demonstrate that the publication is in good faith and for public good is on the applicants.

22. In paragraph 13 of the order of the lower appellate court, the lower appellate court has noted the submission of the applicants and the pleas invoking Exceptions 2 and 9 of Section 499 of IPC. It turned down the contention that first exception cannot be invoked because the news item did not disclose the truth. Two to Section 499 was sought to be invoked on the basis that the imputation is with regard to conduct of public servant in discharge of his public functions or respecting his character so far as his character appears in that conduct and no further. Mr. Kate has not contended before me that second exception is applicable to the present case. This is not a question of any opinion being expressed with regard to the conduct of the complainant but this an imputation with regard to his act of allegedly not disbursing the amounts to the affected persons. It is a definite charge and not expression of any opinion.

23. The courts below have held that the applicants have failed to satisfy them that the publication is in good faith. No material was placed on record to prove that due care and attention was paid to a vital aspect of the matter, namely, verifying the facts pertaining to disbursement of Aid/amount to the affected persons. The lower appellate court in the paragraph referred above has observed that all details pertaining to the amounts allegedly disbursed or aids offered to affected persons were available with the State Government or in any event with the Collector, Pune. Therefore, it was not difficult for the applicants to obtain information and/or to verify the fact whether the aid was offered and to what extent. It is in these circumstances and in my opinion rightly held by the courts below that the news item was not published in good faith. Thus, the ninth exception was being invoked. Thus, the case set up is that the act of the Applicants in Publishing, Printing and selling the News Item squarely falls within the same. Second exception to Section 499, therefore, was not capable of being invoked in the facts and circumstances of the present case. The ninth exception cannot be

invoked because no materials were produced to show that the Imputation is in good faith. In these circumstances the applicants were rightly held to be guilty of the offence of Defamation.

24. With a view to satisfy myself, I have perused the impugned article. The impugned article clearly alleges that the complainant was entrusted with the duty of obtaining consent of eighty four persons and the complainant informed them that they will not get any money but will get aid in the form of construction material to the tune of Rs.750/- and if they are agreeable to the receipt of the same they must put their signatures or thumb impression on a Form. It is alleged that this act was done hastily by the complainant and he obtained the signatures without their consent and without explaining to the affected persons that they are not entitled to any monetary sums.

25. The imputation does not rest here. It is further alleged that after the signatures were obtained on the forms, the complainant took the forms in his custody and filled up details pertaining to the amount

and construction materials. In other words, he manipulated the records and informed the higher authorities that Aid worth Rs.1 lacs has been given on war footing to the affected persons. He has misappropriated the sum of Rs.1 lacs. The affected persons were anxiously waiting for the cash compensations/amount so also for other aid but the complainant told them to see them later on as no approval is received from the collectors office.

26. It is alleged that said acts of the complainant were reported to higher authorities who ordered an Investigation and Inquiry.

27. Thus sum and substance of the allegations and imputations is that a sum of Rs.1 lac which is meant for the affected persons and was to be paid as aid or assistance to them has been pocketed by the original complainant.

28. It is in the light of this clear allegation and imputation with regard to the Character of the original complainant that the applicants invoked the

ninth exception to Section 499 of IPC. Once they cannot demonstrate that Ninth Exception can be invoked, then, it is clear that the offence of defamation is made out. In these circumstances concurrent orders of conviction and sentence cannot be faulted. They are based on Evidence led at the trial. There is neither any error apparent nor perversity disclosed in so far as conviction is concerned. All that is now contended before me is that the applicants were held guilty of the offences punishable under Section 500 of IPC alongwith Section 501 and 502. However, the lower Appellate court set aside the trial court's order applying Section 500 to the applicants.

29. Section 500, 501 and 502 of IPC read as under :-

> ." **Section 500. Punishment for defamation**
>
> . Whoever defames another person shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. "
>
> **." Section 501. Printing or engraving matter known to be defamatory.**
>
> . Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall

> be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."
>
> **." Section 502. Sale of printed or engraved substance containing defamatory matter.-**
>
> . Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a terms which may extend to two years, or with fine, or with both. "

30. Section 500 is providing punishment for defamation. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both. Section 501 makes printing or engraving any matter known to be defamatory as an offence punishable with simple imprisonment for a term provided therein. Section 502 deals with sale of printing or engraved substance containing defamatory material and makes it punishable for the term provided therein.

31. From a perusal of these provisions, it is not possible to agree with Mr.Kate that the trial courts order, in so far as conviction and sentence under Section

500 is concerned, being set aside by the lower appellate court, no offence at all is committed by the applicants.

32. In this behalf as observed earlier, from the materials produced, it is apparent that all applicants invoked ninth exception to Section 499 of IPC. Once that that exception could not had been invoked in the facts of this case, then their act of publishing, printing, circulating and selling the news item is nothing but defamation. It is not the contention of Mr.Kate that the act of the applicants does not come within the purview of Section 499 of IPC. Once this is an admitted position, then, it is futile to urge that Section 500 being inapplicable to the present case no offence is made out at all. On the other hand, the acts of the applicants of printing and selling of printed material containing defamatory material comes within the purview of a specific provision namely Section 501 and 502 of IPC. To the acts of the present applicant, section 501 and 502 alone could have been applied. Hence, they are rightly invoked and applied to the case of the applicants. Therefore, it is futile to urge that there is no offence committed at all. The applicants do not dispute that

they are all connected with the newspaper and the news item in as much as the applicant no.1 is the owner/proprietor of the news/weekly where applicant no.2 is the editor and other applicants are the Assistant Editor and Joint Editor respectively. Their position being such and the news item being published in the weekly newspaper, the courts below have rightly invoked Section 501 and 502 as far as the applicants are concerned and sentenced them accordingly. There is no error disclosed at all in this course adopted by the courts below.

33. In this behalf, reference can usefully be made to a decision of a very eminent learned Judge, H.R.Khanna, J (as His Lordship then was) reported in AIR 1966 Punjab and Haryana Page 93. After referring to the famous decision of the Supreme Court reported in AIR 1966 SC 97 Harbhajan vs. State of Punjab, the Hon'ble Judge observed as under :-

> "5. Mr.R.K. Chhibar on behalf of the accused-appellant has, at the outset, argued that as the accused is the Printer and Publisher of the Hind Samachar, the case against him fell under Section 501 and not under Section 500 of the Indian Penal code, and that as the sanction under Section 198-B of the Code of Criminal Procedure for the

prosecution of the accused was for the offence under Section 500 of the Indian Penal Code only, the entire proceedings against the accused and his conviction under Section 500 of the Indian Penal Code are liable to be quashed. Reference has been made to the Crown v. Uma Shankar, 18 Pun.Re.1889(Cr.), wherein Plowden, J observed that the offences under Sections 500 and 501 were quite distinct, and a criminal court is not competent to amend or alter a complaint under Section 501 of the Penal code into one under Section 500. In this connection I find that the learned Sessions Judge framed charge against the accused both under Sections 500 and 501 of the Indian Penal code for printing and publishing the news item in question. Subsequently when it was pointed out that the sanction, Exhibit P.A which had been granted for the prosecution of the accused, was for the offence under Section 500 of the Indian Penal Code only, the charge under Section 501 of the Indian Penal Code against the accused was dropped.

. It would appear from the above that Section 500 provides the penalty for the simple and plain act of defamation, while Section 501 prescribes the punishment which may be imposed upon a person who prints or engraves any matter knowing or having good reason to believe that such matter is defamatory of any person. The definition of defamation, given in Section 499 reproduced above, goes to show that if a person publishes any imputation concerning another person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of the other person he would, except in cases covered by the Exceptions, be guilty of defaming the other person. The word "publishes" in the definition has obviously been used in its etymological sense as connoting "to make public" or to make known to the people in general. To quote from Halsbury’s Laws of England, Third Edition,

Volume 24, Page 35 "publication consists in making known to the defamatory statement after it has been reduced into some permanent form". As a publisher of a newspaper makes known to the people in general and thus gives publicity to the news item printed in that newspaper, the case against the publisher for the publication of defamatory news item in the Paper would legally and logically amount to defamation simpliciter, and, as such, would be punishable under Section 500 of the Indian Penal code. It may be that if the publisher is also the printer of the newspaper, the case against him would be covered by Section 501 too of the Penal Code but it would not in any way affect his liability as a publisher under Section 500 of the Code. I would, therefore, hold that as the accused is the publisher of the Hind Samachar, he cannot escape his liability for the offence under Section 500 of the Indian Penal Code, if the case be otherwise proved against him, merely because of his having got the issue in question of the Hind Samachar printed.

"6. It has next been argued that the news item in question was published without the knowledge of the accused because he had entrusted the selection of news to the editor of the paper and as such the accused is not responsible for the impugned news item. In this connection I find that the accused is admittedly the printer and publisher of the Hind Samachar. The accused also filed declaration dated 29th August, 1957 Exhibit P.C. under Section 5 of the Press and Registration of Books Act, 1867 (Act XXV of 1867), and declared therein that he was the printer and publisher of the Hind Samachar. Section 7 of that Act inter alia provides that the production of any legal proceeding of an attested copy of such declaration shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration that the said person was the

printer or publisher of every portion of the newspaper in question. As the accused was the printer and publisher of the Hind Samachar at the relevant time and had filed the declaration to that effect, it shall be presumed that the accused was aware of what was printed and published in the issue of Hind Samachar.

"12. Argument has been advanced that the case of the accused is covered by the Ninth Exception to Section 499, which Exception reads as under:-

> " It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good."

. Perusal of the above Exception makes it plain that it is not necessary to show that the imputation regarding the character of another person should be true and all that is needed is that it should be made in good faith for the protection of the interest of the person making it or of any other person or for the public good. As observed by their Lordships of the Supreme Court in Harbhajan Singh vs. State of Punjab, Criminal Appeal No.53 of 1961, D/-2-3-1965: (AIR 1965 SC 97)

> . "the proof of truth which is one of the ingredients of the First Exception is not an ingredient of the Ninth Exception. What the Ninth Exception requires an accused person to prove is that he made the statement in good faith".

34. In the light of the above pronouncement of law with which I respectfully agree I am not in a position to accede to the submissions of Mr.Kate.

35. Lastly, it is urged that all applicants cannot be held guilty of the offence. Each one of them has not played any role in chosing or selecting the news item for publication. In this behalf, no material has been produced before the courts below by the Applicants. Except for applicant no.1 other applicants have declined to cross examine the complainant. The contentions of above nature are being urged for the first time before me. These are not pure questions of law but are mixed questions of facts and law when the complainant in his deposition has specifically stated that all applicants colluded with each other as far as the subject News Item and every single news item published in the news/weekly is the individual, joint as well as collective responsibility of all applicants, which statement is unchallenged, than, it is not possible to uphold the contentions of Mr.Kate. In the absence of any material regarding the role of the applicants regarding publishing the impugned publication it is not possible to absolve

them as prayed.

36. There is much substance in the contentions of original complainant in this behalf and therefore the order convicting all applicants and sentencing them as above is not liable to be interfered with in the revisional jurisdiction of this court.

37. Lastly, tendering of belated apology when the matter was before this court cannot be of much assistance. It is urged that applicant nos.1 and 3 are senior citizens whereas applicant nos.2 and 4 are more than 50 years of age. They would now have to surrender to custody and undergo the sentence awarded, namely, simple imprisonment for four months and to pay the fine, which is already tendered. Considering the fact that they have undergone sentence of 10 days and tendered an apology Mr.Kate prays that a lenient view may be taken. He relies upon the decision of the Supreme court with regard to the position of the applicants in the newspaper. Reliance was placed on the decision in the case of K.M.Mathew (supra). In my view that decision is distinguishable because there the argument was there is

no averment against the chief editor except the motive attributed to him. The Chief Editor was therefore protected and it was held that the complainant cannot proceed against him. This is not the factual position before me. On the other hand in the decision reported in the case of AIR 1981 S.C. 1514 in identical situation the Hon'ble Supreme Court held as under :-

> "16. The High Court appears to be labouring under an impression that journalists enjoyed some kind of special privilege, and have greater freedom than others to make any imputations or allegations, sufficient to ruin the reputation of a citizen. We hasten to add that journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under First Exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact in issue. If they make assertions of facts as opposed to comments on them, they must either justify these assertions or, in the limited cases specified in the Ninth Exception, show that the attack on the character of another was for the public good, or that it was made in good faith: per Vivian Bose, J. in Dr.N.B.Khare v.M.R. Masani and Ors. ILR 1943 Nag.347.
>
> "17. As the matter is of great public importance, it would perhaps, be better to quote the well known passage of Lord Shaw in Arnold v.King Emperor LR (1913-14)41 Ind.App.149 at 169.
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> The freedom of the journalist is an ordinary part of the freedom of the

> subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to this power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful: but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject. No privilege attaches to his position."

38. The original complainant has urged that all ingredients of Section 499 are satisfied so also his reputation and image in the eyes of the public being lowered this is not a fit case for interference in the quantum of sentence also. He has pointed out that it is proved that he sufferead on account of loss of reputation and image being tarnished in the society. His plea is that leniency be not shown to the applicants because on account of their acts he and his family were boycotted socially. People were not willing to interact with him as the allegations were of corruption and misappropriation of public funds. He urges that the increasing tendency among journalists of publishing such news item shows that their approach is irresponsible and casual. The tendency must be curbed otherwise all

persons who are either public servants or in public life would have to face baseless allegations and attacks on their character. Such allegatins are easy to make and difficult to prove. If journalists are allowed to get away with such a loose, false and defamatory publication then the tendency can never be curbed and discouraged. Further he submits that in relatively small towns and their vicinity such publications are available cheaplyh. The small newspapers often cash on popular tastes and with a view to gain publicity and increase circulation sensational stuff is published and circulated by them is the grievance of the original complainant. He submits that the type of journalism indulged in is not in good taste and can be termed as "Yellow Journalism". Thus he strongly opposes reduction in sentence. His submission is that the damage caused by the publication is irreparable. He has lost precious years of his life and career. The family has gone through a trauma which is difficult to cure and compensate.

39. In my view, the facts in this case are somewhat peculiar. The earlier conviction and sentence imposed upon the applicants in the year 1989 was set

aside in part in 1991. A retrial was ordered which concluded in 2005. The order of the appellate court is dated 12.10.2006. The complaint is of 6.10.1988. Some of the accused are senior citizens. All have tendered an apology though belated and the newspaper/weekly has been already closed down. In such circumstances in the facts peculiar to the applicants, the period of sentence awarded by the courts below stands reduced to two months simple imprisonment for both offences namely those punishable under Section 501 and 502 of IPC. Therefore, despite strong objections raised by the original complainant and not entering into any larger controversy I modify the sentence.

40. Except for this modification in the sentence, the Revision Applicants fails.

41. Rule discharged.

42. Ad-interim/Interim orders stands vacated. Needless to state that this sentence would run concurrently. Applicants to surrender to suffer, remaining sentence.

sd/-

(S.C.DHARMADHIKARI, J)